

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Bail Appl..No. 5941 of 2007()

CRIME NO.225/07 OF VELLARADA POLICE STATION

: PETITIONERS/ACCUSED

-
1. RATHEESH,,S/O.SREEDHARAN NAIR,
AGED 27, RATHEESH BHAVAN, MANAVARI,
ANAVOOR P.O. NEYYATTINKARA.
 2. ABHILASH,S/O. UNNIKRISHANAN NAIR,
AGED 19,ABHILASH BHAVAN,
AIKKOD THOTTATHIL VEEDU,KORANAM KODU,
KOTTAKKAL P.O., NEYYATTINKARA.

BY ADV. SRI.S.D.ASOKAN

RESPONDENTS: COMPLAINANTS

-
1. STATE OF KERALA,REPRESENTED BY THE
SUB INSPECTOR OF POLICE,VELLARADA POLICE STATION,
VELLARADA, THIRUVANANTHAPURAM DISTRICT,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
 2. THE DEPUTY SUPERINTENDENT OF POLICE,
NEYYATTINKARA,THIRUVANANTHAPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.5941 of 2007

Dated this the 4th day of October, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations for offences punishable, inter alia, under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the S.C/S.T P.A Act). There is an allegation that the petitioners had insulted and humiliated the defacto complainant with the use of words referring to the scheduled caste to which the defacto complainant belongs.

2. In view of Section 18 of the S.C/S.T P.A Act, this Court is jurisdictionally not competent to grant anticipatory bail in a case where the allegations are raised under Section 3 of the S.C/S.T P.A Act. The learned counsel for the petitioners submits that the allegations, even if accepted in toto, cannot amount to any offence punishable under Section 3 of the S.C/S.T P.A Act. If that be so, certainly the bar of Section 18 of the S.C/S.T P.A Act will not apply. I have been taken through the averment in the F.I statement. I have gone through the averments in the F.I statement. I am unable to find any merit in the contention that the allegations, even if accepted, will not amount to any offence punishable under Section 3(1)(x) of the S.C/S.T P.A Act.

At this stage, no further and more detailed consideration appears to be necessary. There is certainly specific allegation that at a public place, the defacto complainant was assaulted and was intentionally insulted and humiliated by the petitioners.

3. I make it clear that I have not intended to express any final opinion on the contention raised. Suffice it to say that I am not persuaded to agree that the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioners assuming that the allegations do not constitute any offence under Section 3 of the S.C/S.T P.A Act.

4. This Court has time and again repeated in **Ali v. State of Kerala** [2000(2) KLT 280], **Shanu v. State of Kerala** [200(3) KLT 452], **Krishnakumar v. State of Kerala** [2005(1) KLD (Cri.42)] and **P.P.Kader v. State of Kerala** [2005(1) KLD (Cri.250)] that the mere fact that an offence under Section 3 of the S.C/S.T P.A Act is triable by a Court of Session will not justify abdication of jurisdiction by the Magistrates under Section 437 Cr.P.C. It is for the petitioners to surrender before the learned Magistrate and seek regular bail. If the petitioners surrender before the learned Magistrate after giving sufficient prior notice to the Prosecutor in charge of the case and apply for bail, the learned Magistrate, I observe, must dispose of such

application for bail on merits, in accordance with law, in the light of the above referred decisions and expeditiously - on the date of surrender itself.

Hand over a copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

rtr/-